IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

WP(C).No. 10357 of 2007(G)

PETITIONER:

SURESH METHIL,
M/S. SOORYA TRADING CORPORATION,
39/3747, VRM ROAD, RAVIPURAM, KOCHI-16.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

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1. **COMMERCIAL TAX OFFICER-II,**
   KVAT IVTH CIRCLE, COMMERCIAL TAXES,
   ERNAKULAM.

2. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, ERNAKULAM AT KAKKANAD.

3. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM.

4. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.10357/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ANNUEL RETURN FILED BY THE PETITIONER FOR THE YEAR 04-05.

EXT.P2:- COPY OF THE PRE- ASSESSMENT NOTICE NO.2322 2673/04-05, DT.10.10.06 OF THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE REPLY FILED BY THE PETITIONER DT.15.12.06 TO THE PRE-ASSESSMENT NOTICE.

EXT.P4:- COPY OF THE ASSESSMENT ORDER FOR THE YEAR 04-05 OF THE 1ST RESPONDENT, DT.20.12.06.

EXT.P5:- COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER DT.2.3.07, FOR THE YEAR 04-05.

EXT.P5(a):- COPY OF THE STAY PETITION FILED BY THE PETITIONER, DT.2.3.07.

EXT.P6:- COPY OF THE STAY ORDER NO.STA 411/07 DT. 20.3.07 OF THE 3RD RESPONDENT.

EXT.P7:- COPY OF THE REVENUE RECOVERY NOTICE IN FORM NO.I, DT.2.3.07 ISSUED BY THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE ASSESSMENT ORDER FOR THE YEAR 02-03, DT.23.1.04 OF THE ASSESSING AUTHORITY.

EXT.P8(a):- COPY OF THE ASSESSMENT ORDER FOR THE HYEAR 03-04, ISSUED BY THE ASSESSING AUTHORITY, DT.20.1.05.

EXT.P9:- COPY OF THE ADVERTISEMENT IN 'NEW INDIA EXPRESS', DT.16.6.04.

EXT.P9(a):- COPY OF THE PHOTOGRAPH.

EXT.P10:- COPY OF THE PURCHASE BILL (INVOICE) NO.2004 C00624 DT.29.11.04.

EXT.P10(a):- COPY OF THE PURCHASE BILL (INVOICE) NO.INV-001632, SDT.25.2.05.

EXT.P10(b):- COPY OF THE SALE BILL NO.551. DT.15.3.05.

EXT.P10(c):- COPY OF THE SALE BILL NO.564, DT.19.3.05.

EXT.P10(d):- COPY OF THE SALE BILL NO.568, DT.22.3.05.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.10357 OF 2007-G

Judgment

The petitioner is engaged in the sale of mosquito nets made of fibre glass and aluminium. He submits, no manufacturing process is involved in it. But, the assessment has been made, treating the petitioner as a manufacturer. So, he appealed and simultaneously filed a stay application for staying the assessment order. The said stay application dated 02.03.2007 filed along with STA No.411/07 was heard and disposed of by Ext.P6 order, directing the petitioner to pay 1/3rd of the balance tax. So, this Writ Petition is filed, challenging Ext.P6.

2. I feel that having regard to the contentions of the petitioner and the nature of business of the petitioner, he is entitled to get absolute stay, until the matter is finally decided by the statutory appellate tribunal. Accordingly, the recovery pursuant to Ext.P7 shall be kept in abeyance provided, the petitioner furnishes security for the entire amount due under the impugned assessment order, within two weeks from today. It is made clear that I have not expressed any opinion on the merits of the claim of the petitioner. The appellate authority will be free to pass appropriate orders on the appeal, uninfluenced by any observation made by me herein above.

The Writ Petition is disposed of as above.

27.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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